Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks	)	RM-11361

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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Summary

Skype's Petition for a Declaratory Ruling requesting that the Commission apply *Carterfone* principles to commercial mobile radio service wireless networks is based upon a flawed understanding of the *Carterfone* decision, as well as a misunderstanding of the principles underlying the decision. The *Carterfone* decision involved a monopoly wireline network and a monopoly supplier of telephone equipment to access that network. In stark contrast, there currently is robust competition for both services and equipment in mobile wireless markets. This competition has produced substantial benefits for consumers, as well as innovations in both services and equipment. The Commission should not impose unnecessary governmental regulation -- such as *Carterfone*-like rules and Commission mandates -- on a competitive industry that has flourished due to the free marketplace acting on its own.

Skype's Petition is merely an attempt by Skype to circumvent the Commission's auction process. While other companies, such as MetroPCS, have invested billions of dollars to acquire licenses and deploy innovative wireless services, Skype is looking for a free, mandatory right to use the spectrum and networks of others without having to invest anything at all. If Skype wishes to distribute its services over other's networks and spectrum, it should have to pay for that right along with everyone else.

Moreover, since spectrum resources are scarce, they must be managed carefully by the licensee in order to enable reliable services to consumers. It would be a serious mistake to allow free-riding companies to disturb or distort the services of companies attempting to provide new and unique services to the public. Skype's Petition would not serve the public interest – it would only serve the interests of Skype. Skype overlooks the aspect of the *Carterfone* decision which states that allowing a customer to attach any device to the network should not affect the telephone system's utility for others. By granting the Skype Petition, the Commission would

compromise the ability of the underlying carrier to maintain the utility of the system for the subscribers for which the system has been designed.

Lastly, the Skype request that the Commission establish a procedure for establishing uniform technical standards that would permit end users to run internet application software of their choosing on wireless networks presents a number of daunting technical challenges.

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments in opposition to the Petition for a Declaratory Ruling filed by Skype Communications S.A.R.L. ("Skype") which requests that the Commission apply *Carterfone* principles to commercial mobile radio service ("CMRS) wireless networks (the "Petition").' MetroPCS opposes the Skype request as it would be contrary to the public interest for the Commission to rule that "*Curterfone* will be enforced in the wireless industry . . . and create an industry-led mechanism to ensure the openness of wireless networks."[3] Further, MetroPCS submits that the Skype Petition is based upon numerous false assumptions, and a flawed understanding of the *Curterfone* decision and the reasoning underlying it.

[1] For purposes of these Comments, the term "MetroPCS" refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed wholly-owned subsidiaries.

'Petition for Declaratory Ruling, RM-11361, filed February 20, 2007, Public Notice, "Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed," Report No. 2807 (CGB rel. Feb. 28, 2007); 41 C.F.R. § 1.405; *Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attached Devices to Wireless Networks*, RM-I 1361, DA07-1318, Order (rel. Mar. 15, 2007).

[3] Petition at ii.

Introduction

MetroPCS has been among the fastest growing facilities-based wireless telecommunications carriers in the United States and provides wireless broadband personal communications services ("PCS") in a number of major metropolitan areas throughout the United States. MetroPCS launched its innovative wireless service in 2002 in the Miami, Atlanta, Sacramento and San Francisco metropolitan areas. Most recently, MetroPCS launched service in the Tampa/Sarasota metropolitan area in October 2005, in the Dallas/Ft. Worth metropolitan area in March 2006 and in the Detroit metropolitan area in April 2006. Royal Street Communications, LLC ("Royal Street"), a company in which MetroPCS owns a non-controlling interest, acquired licenses in Auction 58 for the Orlando basic trading area, parts of northern Florida, and the Los Angeles basic trading area. Royal Street is building its networks and began offering service in the Orlando and Lakeland-Winterhaven metropolitan areas in November 2006 and expects to begin offering service in Los Angeles in 2007.

MetroPCS was an active participant in Auction 66, the recently concluded Advanced Wireless Services **("AWS")** auction. MetroPCS AWS, LLC, a wholly-owned subsidiary of MetroPCS, was the fourth largest winner (by net provisionally winning bid totals) in Auction 66 with high bids in the aggregate amount of approximately $1.4 billion: MetroPCS was the high bidder on six (6) C Block BEAs and two (2) D Block REAGs.[5] The Northeast REAG license area on which MetroPCS was announced as the high bidder encompasses the entire U.S. east coast corridor from Philadelphia to Boston, including New York City, the remainder of the state of New York as well as the entire states of Connecticut and Massachusetts. The West REAG on

[4] ***See*** Auction No. 66 Reports, Top Bidders, http://wireless.fcc.gov/auctions/66/charts/66press_1.pdf.

[5] *See* Auction No. 66 Closing Chart, Licenses by Bidder http://wireless.fcc.gov/auctions/66/charts/66cls2.pdf; BEA010-C (NYC-Long Island, NY-NJ CT), BEA057-C (Detroit, Ann Arbor, Flint, MI), BEA 062-C (Grand Rapids-Muskegon, MI), BEA088-C (Shreveport-Bossier City, LA), REA 127-C (Dallas-Forth Worth, TX-AR), BEA **153-C** (Las Vegas NV-AZ-UT), REA001-D (Northeast), and REA006-D (West).

which MetroPCS was announced as the high bidder includes, among other metropolitan areas, San Diego, Los Angeles, Portland, San Francisco, Sacramento, Seattle and Las Vegas. In sum, once the Auction 66 licenses are constructed, MetroPCS will own or have access to wireless licenses covering a population of approximately 140 million in the United States, which includes 9 of the top 12 and 14 of the top 25 most populous metropolitan areas in the United States.

MetroPCS targets a mass market which MetroPCS believes is largely underserved by traditional wireless carriers with services plan that are differentiated from the more complex and long-term plans required by traditional wireless carriers. MetroPCS offers wireless voice and data services on a no long-term contract, flat rate, unlimited usage basis, with service plans beginning as low as $30/month. MetroPCS is one of the fastest growing wireless carriers in the United States. In addition, over 80% of MetroPCS customers utilize MetroPCS' service as their primary telecommunications service, meaning that MetroPCS is a significant substitute for landline telephone service in the metropolitan areas it serves.[6] MetroPCS is also increasing the number of wireless customers generally since approximately 65% of MetroPCS' customers are first time wireless users.

MetroPCS also plans to continue to grow and expand into new metropolitan areas and offer new services, including innovative data services. As a consequence, it anticipates that it will participate in the upcoming auction of spectrum in the 698-746,747-762 and 777-792 MHz bands (the "700 MHz Band). Therefore, as a current licensee and a potential future bidder MetroPCS has in interest in the outcome of the Petition.

[6] Because the MetroPCS service often is the customer's sole or primary telecommunications service, MetroPCS also ends up providing essential communications services during times of national emergency, natural disasters and during other crises.

I. UNLIKE THE MONOPOLY WIRELINE NETWORK AT ISSUE IN THE CARTERFONE CASE, THERE IS SUBSTANTIAL COMPETITION FOR SERVICES AND EQUIPMENT IN MOBILE WIRELESS MARKETS

Skype completely ignores a key difference between the situation in *Carterfone*[7], and the current situation for wireless services: the *Carterfone* decision was imposed during an era of a government-sanctioned equipment and service monopoly; in contrast the current mobile equipment and wireless industry has "effective competition."' During the *Carterfone* era, AT&T controlled both the underlying telephone system network, as well as the equipment being manufactured for that network. This monopoly structure limited competition in both the equipment and service markets, even though there was no compelling reason for an equipment monopoly. Consumers were forced to lease telephones manufactured by the service provider's affiliate and then purchase service from the same company. In direct contrast, now there is no monopoly in either the market for wireless services, or in the market for wireless services equipment. Indeed, there currently is substantial competition in the market for wireless equipment and services. For example, the equipment market supports numerous multi-billion dollar, multi-national companies, including Nokia, Motorola, Samsung, LG and Kyocera. In the service market, as noted by the Commission's 11th annual CMRS competition report, "98 percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service . . . up from 88 percent in 2000."[9] In addition, this Commission report found that "[w]ith respect to carrier conduct, the record indicates that competitive pressure continues to drive carriers to introduce innovative pricing plans and service

[7] *Use of the Carterfone Device in Message Toll Telephone Service; Thomas F. Carter and Carter Electronics Corp., Dallas, Tex. v. American Telephone and Telegraph Co.,Associated Bell System Companies, Southwestern Bell Telephone Co., and General Telephone Co. of the Southwest,* Decision, *13 F.C.C.* 2d 420 (1968) ("*Carterfone*").

[8] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Eleventh Report, *FCC-06-*142 at para. 2 (rel. **Sept.** 29,2006)

[9] *Id.*

offerings, and to match the pricing and service innovations introduced by rival carriers."[10] There currently are four nationwide wireless providers, as well as numerous regional players, such as MetroPCS, rural carriers, and new entrants, all who have been providing substantial new and innovative services for the benefit of consumers.

The robust competition in the wireless service industry, which is matched by substantial competition in the wireless equipment market, has resulted in substantial innovations not only with pricing plans and services but also with new and innovative handsets which are feature rich despite declining prices. This is an outgrowth of the pro-competitive policies the Commission has pursued in a conscious effort to reach a point where free marketplace forces rather than governmental fiat dictates the products and services that are available in the market. When the *Carterfone* situation arose, AT&T's monopoly over telephone services and equipment served to stifle innovation. Unlike the situation during the pre-*Carterfone* era for wireline services and equipment, wireless carriers rarely produce their own equipment and instead rely on market forces to innovate and develop new equipment. Equipment contracts between wireless carriers and manufacturers are subject to extensive arms length negotiations, and these negotiations are subject to the free market in which all parties try to negotiate the best deal they can for themselves. Carriers and manufacturers engage in open negotiations for the distribution of handsets – and if a manufacturer does not want to deal with a particular carrier, it has many others to choose from – including 4 nationwide providers, numerous regional carriers, and new entrants. In addition, the manufacturer can sell equipment directly to the public."[11] Significantly, wireless carriers have no undue power over equipment manufacturers. This is a major difference

[10] *Id.* at para. 3.

[11] The market dynamic that keeps manufacturers from selling more units directly to the public is that wireless carriers subsidize the handsets they sell.

from the *Carterfone* era, with the result that consumers today are able to purchase a wide variety of equipment produced by a wide variety of equipment manufactures for a wide variety of wireless services. This free marketplace for equipment has produced a vast array of innovative services and equipment – without the government regulation requested by the Skype Petition.

Under the current regime, manufacturers are free to engage in exclusive handset deals with certain carriers out of their own volition. For instance, Apple, Inc. recently announced a deal with AT&T for the distribution of its iPhone.[12] Apple has noted that it entered an exclusive deal in order to have more control over its product and the customer experience – and also negotiated financial terms to its benefit.[13] Significantly, this innovative handset might not ever have even been created in the "wireless open access" universe that Skype is seeking to craft.

In addition, unlike the pre-*Carterfone* era where the government sanctioned and supported a monopoly service provider - - today wireless spectrum periodically is made available via auction for broadband wireless services - - meaning that new entrants are able to position themselves to provide both traditional and new spectrum-based services. For example, the Commission is on the verge of finalizing rules for 60 MHz of commercial broadband wireless spectrum in the 700 MHz band, which anyone, including Skype, could acquire if it is interested in providing a wireless landline alternative.[14] Skype does not provide any compelling justification to apply the monopoly era *Carterfone* rules to the robust, competitive, paid-for marketplace of today, especially when opportunities exist for new entrants. Skype's half-hearted argument that the marketplace for wireless services is not very competitive flies in the face of repeated Commission findings and analysis to the contrary. Wireless service providers are not

[12] "Verizon Rejected Apple iPhone Deal," Leslie Cauley, USA Today, January **29,2007.**

[13] *Id.*

[14] Skype is an affiliate of eBay Inc.

relying upon Government largess to serve the public. They have paid substantial amounts to acquire spectrum and to build out and maintain their networks. These providers have the right to determine what services they will -- and will not -- provide, including the terms and conditions of use for such services.

Skype attempts to bolster its argument that regulatory intervention is required by asserting that "no single carrier is likely to change its ways on its own," and that "no 'maverick' has emerged" in the wireless services marketplace.[15] This assertion is untrue. Substantial competitive inroads and market penetration is being enjoyed by a wide variety of existing and new carriers. For example, MetroPCS and Leap Wireless -- both of whom offer low cost no-contract, no termination fee, all-you-can eat wireless services -- are aggressive competitors offering differentiated services. New entrants such as Pocket Phone, Revol and MobiPCS also have emerged and are offering differentiated services. These companies are enjoying success by offering disruptive competitive choices, and must be considered "mavericks" in the wireless arena. They also are causing competitive changes in the wireless marketplace. For example, Sprint – one of the nationwide carriers – currently is trialing a flat rate service in certain of its markets.[16] This clearly demonstrates that innovative pricing is being used by mavericks in the wireless marketplace, and that a *Carterfone* type rule is unnecessary to spur competition in the wireless marketplace.

Skype also is arguing that a *Carterfone* rule is necessary to spur competition and services in the broadband data market and to foster a "third pipe" into the home. But, wireless carriers already are competing actively to provide the "third pipe" into the home. Commercial wireless providers are entering the broadband market aggressively. According to Commission data, from

[15] Petition at 25.

[16] "Sprint's Rivals Seen Benefiting From its Woes," CBS MarketWatch, January 9, 2007.

December 2005 to June 2006, 59% of new high-speed access additions came from CMRS carriers." Additionally, either CDMA 1xRTT and/or 1xEV-DO have launched in at least some portion of counties covering roughly 99% of the population, and GPRS, EDGE, and/or WCDMA/HSDPA have launched in at least some portion of counties covering about 94% of the population.[18] Thus, it is clear that wireless carriers are introducing broadband services and are providing useful competition to wireline and cable provision of broadband. Skype should not receive a free ride by being allowed to provide services over networks that have been built at great cost on spectrum bought at auction by other carriers.'' Moreover, wireless carriers do not have any monopoly power in the realm of 3G services.[20]

Skype also blurs the distinctions between hardware, the operating system, and applications running in the hardware. *Carterfone* dealt with the ability to connect hardware to the wired network. In the wireless analog the hardware is the handset used by the subscriber. *Carterfone* did not address the ability of users to use the service for anything they wanted. Indeed, virtually every tariffed service had limitations on services -- such as preventing services which would be disruptive to the network, cause service to other customers to be degraded or interfered with. or for excessive use.

The Skype petition complains about the difficulty in getting its (or other software) into a handset. However, what Skype fails to appreciate is that much of the problem is caused by the

[17] *High-Speed Services for Internet Access: Status as of June 30,* 2006, FCC Wireline Competition Bureau, at 3-4 (Jan. 2007).

[18] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services,* Eleventh Report, WT Docket No. 06-17, at para. 116-117. (Sept. 29,2006).

[19] It is interesting that Skype is not pushing *Carterfone* for developing technology such as broadband over power lines or municipal WiFi.

[20] Although Skype references the need for a "third pipe" into the home, the reality is that a third, fourth and fifth pipe already are being developed. The third pipe already is being pursued hy wireless carriers. The fourth pipe would use broadband over power lines to provide these services, and the fifth pipe is being developed in the form of municipal wi-fi systems.

lack of standardization of operating systems in handsets, or on the network. The wired network, where most users use one of three operating systems - - Windows, Mac, or Unix - - is not a proper analog for wireless where operating systems could range from manufacturer specific to Windows, Symbian, etc. All of this leads to a completely different situation than existed at the time of the *Carterfone* case or that exists with the current Internet.

11. SKYPE IS SEEKING TO CIRCUMVENT THE COMMISSION'S AUCTION PROCESS

Skype is attempting to make an end-around on the Commission's auction process. Skype is looking for a free, mandatory right to use the spectrum and networks of others – which cost billions and billions of dollars - - without having to invest anything. There are a number of other established and new companies - - including MetroPCS - - which are willing and able to deploy innovative wireless services in this hand after purchasing spectrum at a market price in an auction. Indeed, the Commission has stated that "[a]n auction is the most likely to assign the license to the qualified licensee that most highly values it if the auction is open to all potentially qualified licensees."[21] Implementing the "open access" rules that Skype seeks would he grossly unfair to any company that has spent substantial funds and resources to acquire wireless spectrum -- including MetroPCS, which spent over $1.4 billion dollars to acquire spectrum in Auction No. 66. Carriers such as MetroPCS continually invest in their networks to upgrade and protect their services. The Skype Petition essentially is requesting that the Commission allow it to enjoy a free-ride - - with no payment responsibilities whatsoever – on any wireless network it chooses. Further, the rule Skype seeks would discourage other new facility-based carriers - - who will be loathe to invest the billions of dollars necessary to acquire the licenses and build the

[21] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order,* 21 FCC Rcd 5606,5738 (2006).

networks - - if they know that Skype and others will get a free ride on these networks. Thus, granting Skype the relief it seeks also would be contrary to the Commission's oft-stated policy favoring facility-based over non-facility-based competition.

The Coinmission uses auctions to assign spectrum because it is committed to putting spectrum to its highest and best uses. The Commission has noted that "licenses should be assigned as a result of an auction to those who place the highest value on the use of the spectrum," as those parties "are presumed to be those best able to put the licenses to their most effective use."[22] The wireless *Carterfone* rule sought by Skype flies in the fact of core auction principles because it allows the uses of spectrum to be dictated by an end user, not by the carrier who spent billions of dollars on spectrum and the network. If Skype wants to distribute its services over spectrum – it should pay for that right along with everyone else. Carriers that pay substantial amounts for spectrum, network build-out, and network maintenance should not be under any obligation to allow services that over which they have no control to degrade, or cause problems to their networks.[23]

III. SPECTRUM RESOURCES ARE SCARCE, AND CARRIERS MUST HAVE THE ABILITY TO OFFER SERVICES OF THEIR CHOICE OVER THEIR NETWORKS

Spectrum resources are scarce – not unlimited. These resources must be managed carefully by the licensee in order for them to provide robust services to consumers – services that may consist of voice, data, video, etc. These services are not standard services delivered over a "dumb" pipe, such as the services delivered over the old AT&T telephone network. These are

[22] *NextWave Personal Communications, Inc.*, Order on Reconsideration, 15 FCC Rcd 17500, 17513 (2000)

[23] Interestingly, Skype shows its true motives when it complains regarding wireless broadband services not being truly unlimited. What Skype really wants is to dictate the service plans of the wireless carriers.

services that occupy a great deal of bandwidth – bandwidth that is paid for and managed by particular carriers.

This is of particular concern for carriers such as MetroPCS. Ironically, the adoption of a wireless *Carterfone* rule would frustrate the ability of MetroPCS to compete with entrenched nationwide wireless incumbents. MetroPCS customers utilize, on average, three times as much airtime per month as do customers of the nationwide carriers. And, because MetroPCS is a relative newcomer to the market, it has somewhat limited spectrum holdings in its markets (as compared to the national carriers). **As** a consequence, MetroPCS needs to carefully manage the use of its network to assure that there is sufficient capacity available to meet subscriber demands. Thus, the MetroPCS "Terms and Conditions" of service restrict some technically feasible uses of the network, that, in the company's experience, consume inordinate amounts of airtime. For example, the MetroPCS service agreement makes clear that the MetroPCS service is not intended for use by persons seeking a dedicated private line or access line to the Internet, or other continually open circuits (e.g., monitoring or other continuous functions). Restrictions of this nature are essential in order for MetroPCS to be in a position to offer its fixed price unlimited service on a cost effective basis.

In effect, MetroPCS has been successful in serving a previously underserved segment of the wireless market by creating a service that is designed to meet a targeted mass market segment. It would be a serious regulatory mistake for the Commission to treat the specialized MetroPCS network as a mere "pipe" that is subject to open access requirements and thereby allow persons who declined to acquire spectrum at the same auctions as MetroPCS to lever its business off of the MetroPCS investment. Thus, by hindering companies such as MetroPCS in

their ability to provide innovative services to the public, the Skype Petition would not serve the public interest – it would only serve the interests of Skype. [24]

IV. SKYPE OVERLOOKS A KEY ASPECT OF THE CARTERFONE DECISION

Skype repeatedly characterizes the *Carterfone* decision as obligating carriers to allow consumers to attach any device to the network as long as it does not harm the network." In truth, the holding in *Carterfone* is much narrower:

> Our conclusion here is that a customer desiring to use an interconnecting device . . . should be able to do so, so long as the interconnection does not adversely affect the telephone company's operations or the telephone system's utility for others.[26]

The highlighted portion of this holding is fatal to the Skype Petition. Allowing customers to attach devices and *to* run extraneous applications on a wireless network with limited capacity clearly will interfere with the ability of the underlying carrier to maintain the utility of the system for the subscribers for which the system has been designed. As earlier noted, the ability of MetroPCS to offer its unlimited flat fee service clearly would be compromised if end users were free to attach devices designed to give them unlimited always-on Internet access. The utility of the system for MetroPCS' targeted all-you-can-eat voice subscribers would be undermined completely and the useful competition that MetroPCS is bringing to both the wired and wireless markets would be thwarted. *Carterfone*, by its terms, does not compel, let alone support, this result.

Unlike *Carterfone* which dealt with equipment, Skype's proposal is intended to promote the delivery via wireless networks of the Skype offering which is not equipment but rather is a

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[24] Further, it is not clear whether such a **rule** may rise to the level of a regulatory taking prohibited by the United States Constitution.

[25] ***See,*** *e.g.*, Petition at pp. 5-6.

[26] *Carterfone,* 1968 WL 13208 at 4 (emphasis added).

software application running on equipment. As put by Skype, it is asking the Commission to "create a mechanism to increase wireless industry transparency" and to ensure that end users have "rights to run the Internet applications of their choosing.[27] This is not a *Carterfone* principle, this is a radical proposal to subject wireless carriers to a broad based "net neutrality" requirement. However, Skype glosses over the practical difficulties involved in any effort to allow consumers to run "internet communications software of their choice."[28] Skype references the "unique environment of the mobile Internet,"[29] but fails to acknowledge the complexity of the task of establishing a set of technical standards which would achieve this end. The competitive and fragmented markets for both wireless handsets and wireless network infrastructure would render it virtually impossible to establish a neutral set of standards that had the effect of creating transparency for all Internet communications software. And, any suggestion that such a standards setting process - - which extends far beyond equipment compatibility - - is either compelled by or a logical extension of *Carterfone* is simply incorrect.

V. THE SKYPE PETITION RAISES THORNY TECHNICAL ISSUES

Skype's Petition ignores very real technical challenges concomitant with providing unfettered access to wireless provider's networks. Although not limited to these examples, scarce bandwidth, diverse product offerings and exposure to legal proceedings all provide compelling reasons to proceed with extreme caution before granting the Skype proposal.

Perhaps the most troublesome aspect of Skype's Petition is its complete failure to consider the effect unfettered access will have on current networks. Wireless providers have a finite amount of bandwidth to use to provide services to their customers. In order to provide

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"Petition at p. 6.

[28] Petition at p. 30

[29] *Id.*

suitable high quality services to subscribers within this limited bandwidth, wireless companies must be in a position to control the nature and extent of services subscribers may access. Otherwise, a disproportionately low number of a wireless service provider's subscribers may use the available bandwidth to the detriment of other subscribers otherwise desiring to use the network. Such denial of access can hardly be considered as "not adversely affect[ing]" the network or services within the meaning of the *Carterfone* decision.[30]

Wireline providers have a ready solution to the limited capacity problem. They can lay more copper, cable or optical fiber to increase network capacity. For the wireless carrier, however, increasing bandwidth capacity may not be an option. There may not be spectrum available to obtain, meaning that, at some point, capacity cannot be increased by investing in additional infrastructure. Consequently, the increase in network usage may overload the available wireless provider infrastructure. Such an overload will cause increased annoyance to existing customers in the forms of increasingly frequent dropped calls, blockings, and degraded voice and data service. This may impact users who rely on wireless service to protect life and to provide other essential services. Moreover, unlike a situation where a monopoly exists for provision of service, anyone, including Skype can become a carrier and offer whatever services it wants.

Another technical hurdle that needs to be addressed before opening wireless networks to unknown and uncontrolled equipment and developers is protecting the wireless network. The Internet is crowded with individuals and groups determined to do harm. New viruses that can harm networks or their users are introduced or discovered virtually daily. Scam artists use spyware, phishing, website hijacking, and other techniques to extract personal information from

[30] *Carterfone*, 1968 WL 13208 at 4.

unsuspecting users to perpetrate identity related fraud that can take years to unravel. Many of these scams and the resulting personal traumas would he ported to wireless networks and their subscribers if Skype's proposal were followed. Providing unfettered access to wireless providers networks would open doorways to these groups and individuals that are now closed.

As earlier noted, Skype also proposes promulgating standards for accessing wireless networks. The technical implications of such standards are huge. First and foremost, is the lack of uniformity between carriers. Some carriers use CDMA and others GSM/HPSDA - - thus, one size does not fit all. Further backward compatibility dictated by all users limits any ability to open access. It makes little sense to make existing users' phones obsolete, stranding consumer investment in an effort to make standardized wireless access. Moreover, the standards setting body will face huge technical challenges trying to marry the diverse technologies of GSM and CDMA, as well as the hundreds if not thousands of wireless products currently in use.

The process is further complicated by the fact that network service priorities in the wireless environment often rely upon a complex and dynamic set of criteria based upon a mobile unit's proximity to a base station, its power level, etc., which have no counterpart in the wired world. These are not well suited to net neutrality. Wireless networks also do not have the same degree of tolerance as Internet connections for increased usage. In the wired world, increased usage can result in lower speed whereas wireless networks may set usage limits that result in blocked service rather than slower access.

The simple truth is that today's wireless networks are much more complex than the twisted pairs of copper wires to which *Carterfone* sought to connect. Thus, the casual references in the Skype Petition *to* creating a "mechanism" to set technical standards that will ensure open access to wireless networks actually refer to a regulatory nightmare. Skype acknowledges, as it

must, that wireless networks are part of a complex "interdependent ecosystem,"[31] that is "fast-moving and multi-dimensional,"[32] and that presents a "unique environment."[33] Establishing open technical standards in such an environment would be a daunting task to accomplish. Were such standards achievable – which is highly doubtful – there is a serious risk that the standards setting process and related compliance requirements would place an undue burden on carriers, particularly smaller carriers.[34] The Commission should not head down this path without compelling reasons to do so. Here, Skype has failed to make such a compelling case.

Finally, providing unfettered access to wireless network providers exposes the providers to any of numerous lawsuits based on infringement of intellectual property.[35] Assume for example, a developer makes available a device that uses patented technology to enable sharing of songs or ring tones between users of the device over a wireless provider's network. Under Skype's Petition, a wireless provider is powerless to stop this sort of activity, and may very well be subject to patent and copyright infringement lawsuits. Further, many patents include both an application and network component which may open up the carrier to liability. By controlling what subscribers to their networks are allowed to view, wireless providers can provide some measure of protection against such suits.

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[31] Petition at 6.

[32] *Id.*

[33] *Id.*

[34] The last time the Commission had such standards was when it had a monopoly – such as the original standard for cellular. Trying to get all carriers and manufacturers to agree would be a Herculean task which would exhaust the Commission's resources for years to come.

[35] To show how real this is one only need to read the headlines regarding the current patent litigation involving Vonage and Verizon for voice over Internet protocol (VOIP).

VI. CONCLUSION

For the foregoing reasons, MetroPCS respectfully opposes the proposals set forth in the Petition.

Respectfully submitted,

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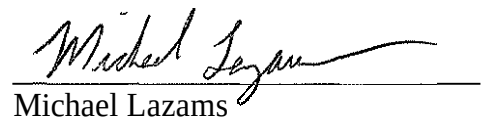
April 30,2007

CERTIFICATE OF SERVICE

I, Michael L. Lazams, hereby certify that a true and correct copy of the foregoing Comments of MetroPCS Communications, Inc. was delivered First-class mail this 30th day of April 2007 to the individual on the following list:



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